

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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RICHARD MILLER and CAROL MILLER,

Plaintiffs/Counter-Defendants-  
Appellees,

v

ROSCOMMON TOWNSHIP, ROSCOMMON  
COUNTY ROAD COMMISSION, and  
MICHIGAN DEPARTMENT OF NATURAL  
RESOURCES,

Defendants/Cross-Defendants-  
Appellees,

and

CYNTHIA BROWN, THOMAS BROWN,  
MICHAEL M. GRANDSTAFF, SARA HEWITT,  
and LEIGHTON D. HEWITT,

Defendants,

and

ESTATE OF RICHARD A. HART,

Defendant/Counter-Plaintiff/Cross-  
Plaintiff/Third Party Plaintiff-  
Appellant,

and

MICHAEL C. HEWITT, PATRICIA HEWITT,  
RAYMOND J. LAUERMAN, and LYNDIA  
LAUERMAN,

Defendants/Counter-  
Plaintiffs/Cross-Plaintiffs/Third  
Party Plaintiffs-Appellants,

and

WAYNE L. HYDE and LINDA M. HYDE,

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UNPUBLISHED

August 21, 2007

No. 267619

Roscommon Circuit Court

LC No. 03-724278-CH

Third Party Defendants-Appellees.

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Before: Kelly, P.J., and Markey and Smolenski, JJ.

PER CURIAM.

In this real property dispute involving lake access, appellants appeal as of right from the judgment of the trial court. Because the trial court's findings of fact are not clearly erroneous and the trial court properly applied the law to those facts, we affirm the judgment.

I. Facts and Procedural History

The South Houghton Heights plat (the Plat) in Roscommon Township was platted in 1922. The plat includes several streets, which were dedicated to the public. Among the streets dedicated to the public were Lansing Road, which has since been renamed Capital Road,<sup>1</sup> and Public Drive. On the Plat, Capital Road is shown running perpendicular to and intersecting with Public Drive. Public Drive is shown on the plat map, but is not within the Plat's boundaries. Rather, Public Drive is shown as the strip of land between the Plat and Houghton Lake.

In October 2003, plaintiffs Richard and Carol Miller sued defendants for violating the scope of the dedication of Capital Road. Plaintiffs also alleged that defendants' use of the road constituted a nuisance. After plaintiffs filed an amended complaint, defendants Raymond J. Lauerma, Lynda Lauerma, Michael C. Hewitt, Patricia Hewitt and Richard A. Hart (the cross plaintiffs) filed an amended cross complaint against defendants Roscommon Township and Roscommon County Road Commission (the Commission) and a counter complaint against plaintiffs. They also filed a third-party complaint against Wayne L. Hyde and Linda M. Hyde, who were the owners of property parallel to the terminus of Capital Road.<sup>2</sup> In the cross and counter complaint, the cross plaintiffs argued the dedication of Public Drive was never accepted or maintained by public authorities. The cross plaintiffs further argued that they had openly and notoriously used that part of Public Drive and the riparian area adjacent to Public Drive directly parallel to the terminus of Capital Road for more than 15 years. Specifically, they stated that they used the area to access Houghton Lake, to moor boats and to maintain a dock. Based on these uses, they further contended, that they had obtained a prescriptive easement to continue using those areas for the same purposes.

On August 25, 2005, the trial court held a bench trial. After taking evidence, the trial court found that, although the plat proprietors had placed Public Drive outside the boundaries of the Plat, its inclusion on the map constituted a common law dedication to the public. The trial court further found that the Commission had made improvements to the extension of Capital Road to Houghton Lake and had expended public funds on the improvements. Therefore, the

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<sup>1</sup> For ease of reference, we shall refer to this street as Capital Road.

<sup>2</sup> The Hydes later filed a counter complaint against various parties.

trial court concluded that the extension had been accepted. The trial court then determined that, because the extension terminated at Houghton Lake, the public had the right to access the lake from that point and had the right to place a public dock there. However, the trial court also determined that activities, such as sun-bathing, parking vehicles or mooring boats for extended periods that block public access to the lake, picnicking, barbequing, and lighting bonfires, were inconsistent with the scope of the public dedication.

In December 2005, the trial court entered an order determining that Capital Road is a public road, which had been established by common law dedication and which extended to the waters of Houghton Lake. The trial court further ordered that Capital Road not be used for non-temporary mooring of watercraft, erecting non-temporary mooring structures or for recreational purposes. The trial court's order permitted one non-exclusive dock to be placed at the end of the road. This appeal followed.

## II. The Extension of Capital Road

Appellants first argue that the trial court erred when it concluded that public acceptance of the land between the point where Capital Road intersected with Public Drive and Houghton Lake constituted an extension of Capital Road to Houghton Lake. Instead, appellants argue that Capital Road ended at the border of the Plat. For this reason, appellants further contend, the acceptance of the land between that point and Houghton Lake was actually an acceptance of Public Drive, which runs parallel to Houghton Lake. Because Public Drive runs parallel to Houghton Lake, appellants conclude, it does not convey rights of access to the general public. We disagree.

“This Court reviews a trial court's findings of fact in a bench trial for clear error and reviews de novo its conclusions of law.” *Ambs v Kalamazoo Co Rd Commission*, 255 Mich App 637, 651; 662 NW2d 424 (2003). “A finding is clearly erroneous when, after reviewing the entire record, this Court is left with a definite and firm conviction that a mistake has been made.” *Michigan Citizens for Water Conservation v Nestlé Waters North America, Inc.*, 269 Mich App 25, 40; 709 NW2d 174 (2005), rev'd on other grounds \_\_\_ Mich \_\_\_ (2007). The clear error standard is highly deferential and this Court may not reverse the trial court's findings simply because it is convinced that it would have decided the case differently. *Id.* at 40-41.

In the present case, appellants do not argue that the trial court erred in concluding that the area in question was dedicated to the public and had been properly accepted by the public authorities. See *Boone v Antrim Co Rd Comm'rs*, 177 Mich App 688, 693; 442 NW2d 725 (1989). Instead, appellants contend that the property in question was part of Public Drive alone and not an extension of Capital Road. Furthermore, appellants argue that, because Public Drive runs parallel to Houghton Lake, acceptance of that portion of Public Drive does not include rights of access to Houghton Lake. See *Meridian Twp v Palmer*, 279 Mich 586, 690-591; 273 NW 277 (1937). Appellants' argument assumes that Capital Road necessarily ends at the point where it intersects with Public Drive and, therefore, cannot extend to Houghton Lake. However, whether these two roads overlap at their intersection or whether Capital Road ends at the point where it meets Public Drive is a matter of the plat proprietors' intent when dedicating the roads in question to the public. See *Higgins Lake Prop Owners Ass'n v Gerrish Twp*, 255 Mich App 83; 96; 662 NW2d 387 (2003) (noting that the intent of the dedicator governs the extent of the dedication and that public ways that terminate at the water are presumed to have been intended to

provide access to the water). Although there is a boundary line at the point where Capital Road meets Public Drive, the boundary merely delineates the end of the Plat rather than necessarily signifying the end of Capital Road. Hence, the trial court could properly find that the intersection constitutes an overlapping part of both roads. Likewise, because the eastern most boundary of Public Drive was not fixed, but rather is of varying widths determined only by reference to the lakeshore, with this finding, the trial court could also properly conclude that the overlapping part of Capital Road terminates at Houghton Lake. Because the trial court found that the area in question constituted an extension of Capital Road that ended in Houghton Lake, and we are not left with a definite and firm conviction that this finding was erroneous, we find no basis for reversing the trial court's findings. *Nestlé, supra* at 40-41.<sup>3</sup>

### III. Prescriptive Rights

Appellants next contend that, because the public obtained no access right to Houghton Lake across from the terminus of Capital Road, the adjacent land owners retained their riparian rights in the area of Houghton Lake directly adjacent to the disputed portion of land. Further, appellants argue that because they maintained a dock, moored boats and accessed the lake from this location in a manner that was open, notorious, adverse and continuous for more than 15 years, they have a prescriptive easement over this area that includes the right to continue doing these activities. See *Higgins Lake Prop Owners Ass'n, supra* at 118. However, because the trial court did not err when it concluded that Capital Road terminated in Houghton Lake and conveyed rights of access to the general public, see *Jacobs v Lyon Twp (After Remand)*, 199 Mich App 667, 671-673; 502 NW2d 382 (1993), appellants could not obtain prescriptive rights based on their use of this area, see *Higgins Lake Prop Owners Ass'n, supra*. Consequently, appellants have no greater rights to use the area than members of the general public.

### IV. Conclusion

The trial court did not clearly err in concluding that Capital Road extends to Houghton Lake and provides the general public with a right to access the lake.

Affirmed.

/s/ Kirsten Frank Kelly  
/s/ Jane E. Markey  
/s/ Michael R. Smolenski

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<sup>3</sup> Appellants further note that the Commission's records of the certified length of Capital Road indicate that Capital Road ended more than 30 feet from the shoreline of Houghton Lake. However, there was also evidence that the Commission had worked the area in question and modified it to support access to the lake. Therefore, on the record as a whole, we cannot conclude that the trial court clearly erred. *Nestlé, supra* at 40-41; see also *Christiansen v Gerrish Twp*, 239 Mich App 380, 387-388; 608 NW2d 83 (2000) (noting that the trial court is free to find, based on relevant evidence, that a public entity actually accepted a longer portion of a road than is specified in the public entity's records).